

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Review of the Commission's Broadcast)	MB Docket No. 98-204
and Cable Equal Employment Opportunity)	
Rules and Policies)	

COMMENTS OF NATIONAL ORGANIZATION FOR WOMEN

The National Organization for Women, NOW Legal Defense and Education Fund, Feminist Majority Foundation, Philadelphia Lesbian and Gay Task Force, and the Women's Institute for Freedom of the Press ("NOW *et al.*") respectfully submit comments in response to the *Third Notice of Proposed Rulemaking* ("*Third NPRM*") of the Federal Communications Commission ("Commission") in the above-referenced proceeding concerning equal employment opportunity ("EEO") rules and policies. In its *Third NPRM*, the Commission generally seeks comments on whether and how to apply the new EEO rules to part-time positions. NOW *et al.* originally proposed application of EEO rules to part-time positions in response to the Commission's *Second Notice of Proposed Rulemaking*.¹ As organizations dedicated to promoting equality by supporting legal, political, social, and economic change, NOW *et al.* continue to urge the Commission to extend its EEO rules and policies to part-time positions.

¹ See *Comments of the National Organization for Women et al.*, MM Dkt. No 98-204, April 15, 2002, at 8-10 (2002) (*Comments of NOW et al.*).

I. APPLICATION OF THE EEO RULES AND POLICIES TO PART-TIME POSITIONS WOULD FURTHER THE COMMISSION'S GOALS OF BROAD AND INCLUSIVE OUTREACH

The Commission can best achieve its goals of ensuring broad and inclusive outreach for job vacancies² by applying its recently released EEO rules and policies to part-time positions. In addition to imposing a series of recordkeeping and reporting requirements,³ the Commission's newly adopted EEO rules require broadcasters and MVPDs⁴ to (1) widely disseminate information concerning full-time vacancies (except in exigent circumstances), (2) notify requesting organizations of full-time vacancies, and (3) complete a specified number of community outreach activities selected from a menu of options.⁵

The Commission indicated that, pending the outcome of this third rulemaking, the new rules do not apply to part-time hires.⁶ The Commission's previous rules did not require any outreach-related reporting for part-time positions and required only substantial compliance with the EEO recruiting requirements.⁷ In formalizing its policies in 2000, the Commission did not

² See Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies, *Second Notice of Proposed Rulemaking*, MM Dkt. No. 98-204, 16 FCC Rcd 22843, 22849 (2001).

³ Broadcasters and MVPDs must collect, but not routinely submit, copies of advertisements and other communications announcing vacancies and information concerning the number and type of full-time vacancies filled, the recruitment sources used, the number of interviewees for each vacancy, and the referral sources used, the number of interviewees for each vacancy, and the referral sources for interviewees and hires. Broadcasters and MVPDs must submit public file reports containing relevant recruitment information for the preceding two years to the Commission at renewal and mid-term (for television employment units with five or more full-time employees and radio employment units with more than ten full-time employees) and each year must post their most recent public file reports covering the preceding year on their websites. Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies, *Second Report and Order and Third Notice of Proposed Rulemaking*, MM Dkt. No. 98-204, ¶¶ 132-52 (Released Nov. 20, 2002) (*Second Order & Third NPRM*).

⁴ MVPDs are multichannel video programming distributors, entities including, but not limited to cable operators, multipoint distribution services, multichannel multipoint distribution services, and direct broadcast satellite services. *Second Order & Third NPRM*, at n.1.

⁵ See *Second Order & Third NPRM* at ¶¶ 72, 106, 113.

⁶ *Id.* at ¶ 104 (defining part-time as less than 30 hours/week). An employer must fully comply with these requirements upon converting a part-time employee to full-time, absent prior recruitment. *Id.*

⁷ *Second Order & Third NPRM* at ¶¶ 104, 182; see Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of the EEO Streamlining Proceeding, *Report and Order*, MM Dkt. Nos. 98-204 and 96-16, 15 FCC Rcd 2329, 2375-76 (2000), *recon. denied* 15 FCC Rcd 22548

provide any meaningful guidance on the level of participation required for substantial compliance.⁸ However, the Commission has generally declined to find broadcasters or cable entities in non-compliance with EEO rules with respect to part-time recruitment, instead electing to “not focus on part-time hires in [its] review of EEO programs.”⁹ The recent *Second Report and Order* does not specifically address the substantial compliance issue.

Maintaining disparate standards for full-time and part-time positions frustrates the Commission’s goals of broad and inclusive outreach. As shown below, part-time positions constitute a significant portion of the total workforce in the broadcast industry and provide a crucial gateway for entry into the industry. Thus, failure to fully recruit for these positions denies many potential applicants the opportunity to learn about vacancies and capitalize on opportunities. Furthermore, maintaining disparate standards may lead to substantial abuse of the EEO rules. Application of the EEO rules to part-time positions would further the Commission’s goals of broad and inclusive outreach at no appreciable burden to broadcasters or MVPDs.

A. Part-Time Employees Comprise a Significant Portion of Broadcast Positions

In the *Third NPRM*, the Commission specifically seeks comment on the type and number of positions in the broadcast and MVPD industries that fall into the part-time category.¹⁰ Both recent studies and the Commission’s prior analysis demonstrate the significance of part-time

(2000) (*2000 Report and Order*). The Commission initially invited comment on the treatment of part-time hires in 1994 but, after receiving comment, concluded that “the decision of whether or not to include part-time hires in [its] analysis may be an important issue which needs further study because the total number of employees, whether full-time or part-time, may play an important role in assessing an entity’s overall employment profile.” *Implementation of Commission’s Equal Employment Opportunity Rules, Report*, MM Dkt. No. 94-34, 9 FCC Rcd 6276, 6315 (1994).

⁸ See *2000 Report and Order*, 15 FCC Rcd at 2375.

⁹ *Id.*; see, e.g., *Enterprise Media of Toledo, L.P.*, 12 FCC Rcd 3920, 3923-24 ¶ 11 (1997) (“[O]ur primary focus is on [recruitment] efforts for full-time vacancies when analyzing EEO programs.”); *WFSQ (FM)*, 7 FCC Rcd 6045, 6046 ¶ 8 (1992) (“Although the Commission requires that broadcaster provide equal employment opportunity for both full and part-time positions, we primarily focus on full-time hires when analyzing a station’s EEO record.”); *Regents of New Mexico State University*, 11 FCC Rcd 6605, 6607-08 ¶¶ 10-12 (1996) (reviewing only data relating to full-time positions even though licensee also presented part-time information).

¹⁰ *Second Order & Third NPRM* at ¶ 182.

positions to the broadcast industry.¹¹ A study jointly conducted by the Radio-Television News Directors Association & Foundation and Ball State University determined that, in 2001, part-time positions constituted 31 percent (31%) of radio news staffs and 10 percent (10%) of television news staffs.¹² In considering whether to combine part-time and full-time employment data on the Annual Employment Report in 1987, the Commission indicated that part-time employees comprising 17 percent (17%) of the broadcast industry constituted a “significant portion of the total workforce.”¹³ The overall percentage of part-time employees in the broadcasting industry in 2001 exceeded 17% and, therefore, is “significant” under Commission’s own standards.

A report published by the Missouri School of Journalism further illustrates the prominence of part-time employees in the radio industry.¹⁴ Of the 12,000 radio station employees in 2001, almost half (5,500) worked less than 40 hours/week.¹⁵ Although this figure does not pinpoint the actual number of part-time employees as defined by the Commission (less than 30 hours/week), it nonetheless illustrates the importance of the part-time contingent in the radio industry.

Part-time positions have become increasingly significant for stations focusing on cutting costs and maximizing efficiency. Economic slowdowns have prompted many stations to hire

¹¹ The Commission defines part-time employees as those working less than 30 hours/week and describes temporary employees as those hired as emergency replacements for absent regular employees or those hired to perform a particular job for a limited period of time (typically less than 6 mos). *Id.* at ¶¶ 103, 104. NOW *et al.* support defining part-time employees as all employees, excluding temporary hires, working less than 30 hours/week.

¹² See Radio-Television News Directors Association & Foundation & Ball State University, *RTNDA/Ball State University 200 News & Staffing Survey* (2001), available at http://www.rtna.org/research/staff_2001.shtml (updated from NOW’s previous comments).

¹³ Amendment of Part 73 of the Commission’s Rule Concerning Equal Employment Opportunity in the Broadcast and Radio Television Services, *Report and Order*, 2 FCC Rcd 3967, 3970 (1987).

¹⁴ See *News Operations at U.S. Radio Stations*, Vernon Stone, Missouri School of Journalism available at <http://www.missouri.edu/~jourvs/gaops.html>.

¹⁵ *Id.*

more part-time employees to reduce overall costs,¹⁶ and consolidation of the radio industry has prompted “many radio stations [to use] many more part-timers than they did...in order to be more efficient in their staffing.”¹⁷ The substantial number and increasing importance of part-time positions evidences the need for employers to apply the full extent of the EEO rules to these positions.

B. Part-Time Positions are a Crucial Gateway to Entry into the Broadcast Industry and Often Provide Unseasoned Applicants with the Opportunity to Gain Relevant Work Experience

In the *Second Report and Order* and *Third NPRM*, the Commission also inquires about the significance of part-time positions for entry into the broadcasting industry and acknowledges “that some positions involving less than a forty-hour week are as important as full-time positions.”¹⁸ Indeed, part-time positions may be more important than full-time positions in terms of facilitating entry into the broadcast industry. Part-time positions offer opportunities to learn requisite, industry-specific job skills, systems, and procedures, thereby providing unseasoned applicants the opportunity gain meaningful work experience.¹⁹ As Marilyn Kushak, Vice President of Midwest Family Broadcasters, explained in *en banc* testimony at the Commission, part-time positions are very valuable, particularly for “interns to be able to move into [the] industry and get some very valuable experience.”²⁰ Similarly, in recognizing that “part-time employment is a good training ground for the broadcast industry,” the National

¹⁶ See *Comments of the National Hispanic Media Coalition*, MM Dkt. No. 94-34, June 13, 1994, at 3 (1994).

¹⁷ *En Banc Testimony at Commission on June 24, 2002 re: Equal Employment Opportunity Rules and Policies* by Joan Gerberding, President of American Women in Radio and Television available at <http://www.fcc.gov/realaudio/tr062402.txt> (June 24, 2002).

¹⁸ *Second Order & Third NPRM* at ¶¶ 104, 182.

¹⁹ See *Comments of American Women of Radio and Television, Inc.*, MM Dkt. No. 98-204, April 15, 2002, at 9 (2002) (“*Comments of AWRT*”).

²⁰ See *En Banc Testimony at Commission on June 24, 2002 re: Equal Employment Opportunity Rules and Policies* by Marilyn Kushak, available at <http://www.fcc.gov/realaudio/tr062402.txt> (June 24, 2002).

Association of Broadcasters previously urged the Commission to support stations' hiring of part-time workers.²¹

Considering the crucial nature of part-time positions in the industries, the Commission should mandate full recruitment of part-time vacancies. Linda Berg, the Political Director of NOW, testified before the Commission that “without wide dissemination of information about part-time positions, a significant avenue of entry into broadcasting may be unavailable for many potential applicants,” including “women who re-enter the work force via part-time jobs after having children.”²² As the only female head of a publicly-traded media organization represented at the Commission’s EEO *en banc* hearing, Cathy Hughes highlighted that little progress has been made for women in broadcasting, and that she was an exception “because the Federal Communications Commission pried open the window of opportunity that afforded [her] an equal chance to prove [her] worth in value to the broadcasting community.”²³ The Commission can afford such opportunities to an even wider segment of the community by applying its EEO rules to part-time positions.

C. Failure to Apply the EEO Rules to Part-Time Positions Could Lead to Evasion of the Rules

Maintaining disparate standards for full-time and part-time positions may lead to substantial abuse of the new rules. For example, a broadcaster may evade compliance by hiring a large percentage of part-time employees working just under 30 hours per week. In addition, upon electing to convert a part-time employee into a full-time employee, a broadcaster may simply go through the motions of wide recruitment, without ever intending to consider any of the

²¹ *Comments of National Association of Broadcasters*, MM Dkt. No. 98-204, April 15, 2002, at 35 (2002).

²² See *En Banc Testimony at Commission on June 24, 2002 re: Equal Employment Opportunity Rules and Policies* by Linda Berg, Political Director for the NOW available at <http://www.fcc.gov/realaudio/tr062402.txt> (June 24, 2002); see also *Comments of NHMC*, at 3 (“Many of these part-time jobs are for entry-level positions.”).

other applicants. Alternatively, to avoid having to go through full recruitment, a broadcaster may decline to convert a part-time employee into a full-time employee despite investing significant time and resources into that employee's development. Full application of the EEO rules to part-time positions will prevent such abuses and ultimately help to ensure that the Commission's goals of broad and inclusive outreach are achieved.

II. APPLICATION OF THE NEWLY ADOPTED EEO RECRUITING, RECORDKEEPING, AND REPORTING REQUIREMENTS TO PART-TIME POSITIONS WOULD NOT UNDULY BURDEN BROADCASTERS OR MVPDS

The Commission also seeks comment on how burdensome compliance with the recruitment, recordkeeping, and reporting requirements for all part-time positions would be for broadcasters and MVPDs.²⁴ Rejecting the generalized claims of broadcasters as to alleged burdens, the Commission has *already* determined that its new, finalized rules “fulfill [its] public interest goals while maintaining minimal regulatory burdens and ease and clarity of administration.”²⁵ Indeed, the Commission designed a series of provisions in its EEO rules to alleviate the regulatory burden on broadcasters and MVPDs.²⁶ These provisions collectively ensure that application of the EEO rules to part-time positions would impose no appreciable burden.

²³ See *En Banc Testimony at Commission on June 24, 2002 re: Equal Employment Opportunity and Policies* by Cathy Hughes, Radio One available at <http://www.fcc.gov/realaudio/tr062402.txt> (June 24, 2002).

²⁴ *Second Order & Third NPRM* at ¶ 182.

²⁵ *Id.* at 74; ¶ 141 (“NAB provides no additional documentation as to the possible burden of this requirement [regarding public file reports] beyond that which we found insufficient in the *Recon.*”).

²⁶ Such provisions include: (1) an exigent circumstance exception to the requirement that stations widely disseminate vacancy information, enabling broadcasters to fill vacancies without recruitment when circumstances so warrant; (2) an exemption for small stations (i.e. with fewer than five full-time employees); (3) a reduction in the number of menu options required for stations operating in “smaller markets,” regardless of their size; (4) an allowance for required documents to be maintained in electronic format; (5) an allowance for joint-performance of menu options; (6) flexibility in formatting public file reports; and, (7) a reduction in the amount of required referral information (i.e. the Commission does not require broadcasters and MVPDs to collect applicant referral information). See generally *Second Order and Third NPRM*.

Application of the EEO rules to part-time positions may actually minimize the regulatory burden on broadcasters and MVPDs. Because broadcasters and MVPDs are required to perform EEO-related outreach, recordkeeping, and reporting for full-time positions, they will already have an established framework for satisfying similar requirements for part-time positions.²⁷ By eliminating the differences in how stations record and report on full-time and part-time positions, application of the new EEO rules to part-time positions will actually simplify the stations' internal administrative processes.²⁸ Furthermore, application of the EEO rules to part-time positions will make conversion of a part-time employee into a full-time employee easier because stations will not have to keep track of whether they initially recruited for the positions and will not have to perform additional recruitment at a later date for failure to initially recruit. Moreover, by applying the EEO rules consistently to both full-time and part-time positions, the Commission can avoid unnecessary confusion about the "substantial compliance" standard previously in effect. Thus, application of the EEO rules to part-time positions would impose no appreciable burden on broadcasters or MVPDs and may actually minimize the burden.

²⁷ See *Comments of NOW et al.*, at 9-10.

²⁸ See *Comments of AWRT*, at 9-10.

CONCLUSION

Application of EEO rules to part-time positions furthers the Commission's goals of broad and inclusive outreach by ensuring that stations fully recruit for a substantial and significant portion of the broadcast industry workforce. Part-time positions provide a crucial gateway into the broadcast industry as a viable means of gaining meaningful work experience. By widely disseminating part-time vacancy information, a broader segment of society will be able to benefit from these opportunities at only minimal, if any, cost to broadcasters and MVPDs.

Respectfully submitted,

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